

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,792

IN THE MATTER OF:

Served September 28, 2007

SYDNEY SHUTTLE, LLC, Suspension and)
Investigation of Revocation of)
Certificate No. 489)

Case No. MP-2007-064

This matter is before the Commission on respondent's response to Order No. 10,742, served September 5, 2007.

I. BACKGROUND

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.²

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 489 for a minimum of \$1.5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

Certificate No. 489 was rendered invalid on April 6, 2007, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 10,390, served April 6, 2007, noted the automatic suspension of Certificate No. 489 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 489, and gave respondent thirty days to replace the expired endorsement and pay the \$50 late fee due under Regulation No. 67-03 (c) or face revocation of Certificate No. 489.

Respondent timely paid the \$50 late fee and submitted a \$1.5 million primary WMATC Insurance Endorsement with an effective date of April 20, 2007, which, at the time it was filed, created a coverage gap of fourteen days, from April 6, 2007, through April 19, 2007.

Under Commission Rule No. 28, respondent is required to verify that it ceased transporting passengers for hire under Certificate No. 489 as directed by Order No. 10,390. Acting on advice from

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

Commission staff, respondent's president, Sidney M. Purnell, filed a statement asserting that respondent did not transport any clients from April 6, 2007, to April 26, 2007. Respondent also caused to be filed a statement from ACS State Healthcare, the claims agent for the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid), one of respondent's clients. ACS's statement asserts respondent has not filed any claims for payment "from 04/06/07 to present." Unfortunately, the ACS statement is not dated.

Also acting on advice from Commission staff, respondent produced copies of its checking account statement for the March-April 2007 period. But instead of corroborating respondent's assertion that respondent stopped operating on April 6, the deposit and debit activity was consistent with continued operations on behalf of clients other than DC Medicaid. Indeed, respondent has rates on file for non-Medicaid clients. Order No. 10,520 accordingly directed respondent to verify continued cessation of operations and to support the verification with a valid confirmation from DC Medicaid or its agent and with copies of respondent's business records for the period beginning January 1, 2007, and ending June 1, 2007.³

Thereafter, respondent submitted a revised \$1.5 million WMATC Insurance Endorsement. The revised endorsement is effective April 6, 2007. This eliminates the 14-day gap in coverage created by the initial replacement endorsement filed April 13. Respondent also submitted copies of business records responsive to Order No. 10,520 and a second statement from respondent's president, Sidney M. Purnell. But respondent did not submit any further statement from ACS or DC Medicaid.

Among respondent's business records are copies of invoices for trips between points in the Metropolitan District on twenty-four separate days while Certificate No. 489 was suspended: April 20, 25-26, and 30; and on May 1, 2, 4-5, 7-12, 14-17, 19, 21-24, and 30. These invoices are important because although respondent succeeded in closing the 14-day insurance gap, closing the gap did not terminate the suspension. On the contrary, Order No. 10,390 - which the record shows respondent received on April 7, 2007 - clearly states that "respondent shall not transport passengers for hire under Certificate No. 489, unless and until otherwise ordered by the Commission." No such order has issued as yet.

Respondent's records also include copies of checks and check stubs representing payment from United Cerebral Palsy of Washington, D.C. and Northern Virginia, Inc. (UCP) to respondent. The checks and check stubs are consistent with the invoices, and a statement from UCP's executive director, Ted Bergeron, explains that UCP hired respondent to transport UCP's clients. Given the UCP invoice dates

³ See *In re Special People Transp., LLC*, No. MP-06-103, Order No. 9849 (Aug. 18, 2006) (requiring records and Medicaid corroboration) .

noted above, it is apparent that respondent transported UCP clients for hire in the Metropolitan District while suspended.

Order No. 10,742 accordingly directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 489, for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Order No. 10,390, by conducting operations under an invalid/suspended certificate of authority,⁴ and for knowingly and willfully violating Order No. 10,520 by not producing a revised statement from ACS or DC Medicaid.

In addition, Order No. 10,742 granted respondent fifteen days to submit a request for oral hearing on the condition that respondent specify the grounds for the request, describe the evidence to be adduced, and explain why such evidence cannot be adduced without an oral hearing.

II. REQUEST FOR ORAL HEARING

Article XI, Section 10(c), of the Compact, provides that the Commission may suspend or revoke a certificate of authority for willful violations after notice and hearing. A paper hearing is normally all the statute requires.⁵ An oral hearing is unnecessary, in any event, if no material issue of fact is in dispute.⁶

Respondent requests an oral hearing to adduce live testimony on the following "facts": (1) that respondent's insurance broker committed error; (2) that respondent has been an excellent service provider; (3) that respondent's clients found respondent's service to be exemplary; (4) that at no time was respondent without insurance; and (5) that respondent has cooperated in good faith with the Commission.

The first three "facts" are irrelevant to a determination of whether the Commission should revoke Certificate No. 489 for respondent's willful failure to obey a cease-and-desist order. That respondent's noncompliance with Regulation No. 58 and consequent suspension of Certificate No. 489 was the alleged product of insurance broker error does not negate the willfulness of respondent's violations,⁷ and however excellent or exemplary, unlawful service is just that - unlawful. Respondent's proffer on this point appears to proceed from a misunderstanding of what constitutes a violation of Regulation No. 58. The violation consists of a failure to maintain an

⁴ See *In re Rehoboth Transp. Servs. LLC*, No. MP-04-155, Order No. 8521, served (Jan. 24, 2005) (carrier that submitted invoices to client for service during suspension period required to show cause) .

⁵ *In re Babikir Ibrahim Elhag, t/a "BTS" Babcare Transp. Servs.*, No. MP-04-01, Order No. 7891 (Mar. 23, 2004).

⁶ *Id.*; *In re Diamond Tours! Inc.!* No. MP-82-06! Order No. 2347 ~~1.T" 24~~ 24, aff'd on reconsideration, Order No. 2354 (Aug. 5, 1982).

⁷ See *In re Junior's Enterprises, Inc.*, No. MP-03-165, Order No. 7878 (Mar. 19, 2004) (employee negligence no defense) .

effective WMATC Insurance Endorsement on file with the Commission at all times.⁸ The record is clear that no effective endorsement was on file for respondent from April 6, 2007 (the expiration date of the endorsement filed July 14, 2006) until April 20, 2007 (the effective date of the replacement endorsement filed April 13, 2007). And unlike suspensions under Regulation No. 58, lift-suspensions are not automatic.⁹ In any case, Order No. 10,390 clearly instructed respondent not to resume operations until "ordered" to do so by the Commission, and no such order has issued yet. And inasmuch as this is the fourth suspension of Certificate No. 489 for the same offense, respondent should be well acquainted with these rules by now.¹⁰

The fourth "fact", that respondent's operations while suspended were fully insured, is not in dispute at this time, now that the 14-day gap has been closed.

As for the fifth "fact", we do not need respondent's testimony to determine whether and to what extent respondent has cooperated with this investigation. The record speaks for itself on that point. While it is true that respondent ultimately produced the inculpatory UCP invoices, it is also true that before producing those invoices, respondent's president, Sidney M. Purnell, filed a statement on May 9, 2007, dated April 26, 2007, claiming that respondent "did not transport any clients from April 6, 2007 to present." This statement is not true. As the UCP invoices clearly demonstrate, respondent was conducting operations on the very day Mr. Purnell signed his statement, had conducted operations just the day before, and conducted operations several more times after the statement was signed but before it was filed. Hence, while respondent's cooperation in producing the invoices is duly noted, it is tempered by Pres. Purnell's misleading testimony and respondent's failure to produce a valid statement from ACS or DC Medicaid as ordered.

Finally, we do not see what bearing any of the five "facts" has on respondent's failure to submit a valid statement of confirmation from ACS or DC Medicaid.

For the foregoing reasons, the request for oral hearing is denied.

III. ASSESSMENT OF FORFEITURE AND ORDER OF PROBATION

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under

⁸ Regulation No. 58-02.

⁹ See *In re Nile Express Transp., Inc.*, No. MP-07-050, Order No. 10,376 (Apr. 3, 2007) (Exec. Dir. has no delegated authority to lift suspension in gap case even if gap is closed).

¹⁰ The three previous suspensions were noted in: *In re Sydney Shuttle, LLC*, No. MP-04-123, Order No. 8127 (June 25, 2004); *In re Sidney Miles Purnell, t/a Sydney Shuttle*, No. MP-03-167, Order No. 7569 (Dec. 1, 2003); *In re Sidney Miles Purnell, t/a Sydney Shuttle*, No. MP-03-84, Order No. 7359 (Aug. 20, 2003).

it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation." Each day of the violation constitutes a separate violation.¹²

"Knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹³ "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard.¹⁴ Continuing to operate in the face of a cease-and-desist order is the epitome of knowing and willful conduct.¹⁵

As noted above, the record shows respondent received the cease-and-desist order - Order No. 10,390 - on April 7, 2007. Respondent's operations thereafter are considered knowing and willful.

In situations similar to this one - operating while suspended but not while uninsured - the Commission has assessed a civil forfeiture of \$250 for each day of unauthorized operations and placed carriers on probation for one year.¹⁶ We shall follow the same course here and assess a civil forfeiture of \$250 per day for twenty-four days,¹⁷ or \$6,000. We will suspend all but \$2,000 in recognition of respondent's production of inculpatory invoices.¹⁸ Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$6,000.

Because respondent has offered no explanation for failing to produce a valid statement from ACS or DC Medicaid, as directed by Order No. 10,520, we will assess a forfeiture of \$250 for knowingly and willfully violating Order No. 10,520.¹⁹

IV. UNMARKED VEHICLE

Regulation No. 61 requires the display of carrier name and number on both sides of each vehicle operated under a WMATC

¹¹ Compact, tit. II, art. XIII, § 6(f) (i).

¹² Compact, tit. II, art. XIII, § 6(f) (ii).

¹³ *In re Special People Transp., LLC*, No. MP-06-103, Order No. 10,683 (Aug. 8, 2007); *In re Zee Transp. Servo Inc.*, No. MP-07-120, Order No. 10,671 (Aug. 8, 2007); *In re Annie Gardner, t/a Gardner Transportation*, No. MP-06-115, Order No. 10,456 (May 8, 2007); *In re Northstar Transp. LLC*, No. MP-06-122, Order No. 9901 (Sept. 11, 2006); *In re EMKServs., Inc.*, No. MP-04-153, Order No. 8440 (Nov. 29, 2004).

¹⁴ Order Nos. 10,683; 10,671; 10,456; 9901; 8440.

¹⁵ Order No. 8440.

¹⁶ *See e.g.*, Order Nos. 10,671; 10,456; 9901.

¹⁷ April 20, 25-26, and 30; May 1, 2, 4-5, 7-12, 14-17, 19, 21-24, and 30.

¹⁸ *See In re Malek Invest., Inc., t/a Montgomery Airport Shuttle, O< Malek Invest. of Va., Inc., O< Assadollah Malekzadeh*, No. MP-98-53, Order No. 5707 (Sept. 22; 1999) (suspending 70% of forfeiture where carrier produced inculpatory records) .

¹⁹ *See* Order No. 10,683 (assessing \$250 forfeiture for failing to submit DC Medicaid confirmation) .

certificate of authority. While this investigation was pending, the Commission received evidence of respondent operating an unmarked vehicle. Respondent will be directed to furnish a current vehicle list and present all vehicles for inspection. Failure to comply shall be grounds for assessing a civil forfeiture and/or revoking Certificate No. 489.

V. CONCLUSION

Once respondent has complied with this order and all of respondent's vehicles have passed inspection, the suspension shall be lifted and the period of probation shall commence.

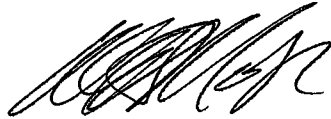
THEREFORE, IT IS ORDERED:

1. That the request for oral hearing is denied.
2. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a net civil forfeiture against respondent in the amount of \$2,000 for knowingly and willfully violating Article XI, Section 6(a), of the Compact by transporting passengers for hire between points in the Metropolitan District on twenty-four separate days while Certificate No. 489 was invalid/suspended.
3. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$250 for knowingly and willfully violating Order No. 10,520 by failing to produce all responsive documents.
4. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of two thousand two hundred fifty dollars (\$2,250).
5. That applicant is hereby directed to present its vehicle(s) for inspection and file the following documents within thirty days:
(a) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle operated by respondent; (b) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle on the list; and (c) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia.
6. That upon timely compliance with the requirements of this order, and provided respondent is in compliance with Commission Regulation No. 58, the Commission shall issue an order reinstating Certificate No. 489, subject to a one-year period of probation. A willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, during the period of probation shall constitute grounds for immediate suspension and/or revocation of

Certificate No. 489 without further proceedings, regardless of the nature and severity of the violation.

7. That Certificate No. 489 shall be subject to revocation pursuant to Article XI, Section 10 (c) of the Compact, and the full forfeiture of \$6,250 assessed in this order shall be immediately due and payable, if respondent fails to timely comply with the requirements of this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:

A handwritten signature in black ink, appearing to read 'W. S. Morrow, Jr.', with a stylized, cursive script.

William S. Morrow, Jr.
Executive Director